IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 516 OF 2005
(FOR LEAVE TO APPEAL)

The State of Maharashtra. ..Applicant.

Vs.

Prakash Trimbak Vazarkar .. Respondent.

Smt.V.R.Bhonsale, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 31st January, 2005

P.C.

Heard the learned APP and perused the impugned judgment.

2. The learned trial Judge while considering the evidence on record and particularly, the deposition of the prosecutrix, observed thus-

> "The complainant has admitted in her cross-examination that in the year 1996 she had remained pregnant and undergone abortion in the hospital of Dr.Shevale at Aurangabad. Admittedly, the fact that the complainant's marriage took place with the accused in a temple was not disclosed by her in her complaint Exh.14. It is clear from the cross-examination of the complainant that her first sexual intercourse with the accused took place in the year 1995 in the house of accused and thereafter they had number of such sexual relation not only at Jalna but also at Sindhdurgh, Pune etc. places. The complainant has admitted that she and the accused also jointly toured various places viz. Sindhkhed Raja, Poona, Alibag, Raigad, Mumbai, Yavatmal, Sindhdurgh, Parbhani, Aurangabad. It has

> further come in her cross-examination that during the posting of the accused at Parbhani she herself used to go to Parbhani to meet him. It also has come in her cross-examination that in the year 1995 itself she came to know that the accused was already married. Despite the substance of the first marriage of the accused the complainant appears to have performed a marriage with him in a temple in the year 1996. It means since then i.e. 1996 till about May 2002 the complainant lived together with the accused as his wife. If it be so then it needs to be held that the complainant was a willing and consenting party to her sexual relation with the accused. The complainant does not say anywhere if her consent was obtained by the accused by putting her or any person in whom she was interested in fear of death or of hurt."

3. The learned trial Judge found as a fact that in the year 1995 when the incident is said to have taken place, the prosecutrix was about 32 years old. It has also been found as a fact that the prosecutrix and the accused were in love with each other and had stayed together quite often. The learned trial Judge held that there was no evidence to suggest that the accused ever misrepresented the prosecutrix. Nothing could be shown otherwise by the learned Additional Public Prosecutor.

4. In the aforesaid backdrop, the acquittal of the accused for the offence under section 376 IPC cannot be faulted.

5. In respect of the offence under section 420, the learned trial Judge in para 17 of the judgment held thus-

> "When the complainant till May 2002 was in deep love with the accused obviously there must not be any occassion for the accused to cheat and dishonestly induce the complainant for obtaining the keys of her flat. The complainant has deposed that in the year 2002 the accused forcibly obtained key of her flat from her and started residing there. If it be so then why then & there only the complainant did not lodge her complaint against the accused. I repeat the complaint Exh.14 is dtd. 4.3.2002. The delay stands unexplained. It does appear that the complaint Exh.14 was lodged to entice the accused to come back to the complainant's fold."

6. We do not find any infirmity in the judgment of acquittal.

7. No case for grant of leave is made out.

8. Criminal application for leave to appeal is, accordingly, rejected.

(R.M.LODHA, J.)

(R.S. MOHITE, J.)